IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.223 OF 2005

Mohd. Salim Adam Kasu ... Applicant
(Accused No.13)

Vs.

Narcotics Control Bureau & Anr. ... Respondents

Mr. B.D. Joshi with Mr. Ganesh Gole for the applicant.

Mr. D.N. Salvi for respondent 1.

ALONG WITH

CRIMINAL BAIL APPLICATION NO.1312 OF 2005

Shri Futarmal M. Jain ... Applicant
(Accused No.14)

Vs.

Union of India & Anr. ... Respondents

Mr. B.D. Joshi with Mr. Ganesh Gole for the applicant.

Mr. D.A. Nalavade for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 13TH MAY, 2005.

P.C.:-

1. These two applications can be disposed of by a common order because they arise from the same facts. The applicant in Criminal Application No.223 of 2005 is accused 13 and the applicant in Criminal Bail Application No.1312 of 2005 is accused 14 in N.D.P.S. Special Case

No.23 of 2001, which is pending on the file of Special Judge, N.D.P.S. for Brihanmumbai. The applicant - Mohd. Salim Adam Kasu made an application for bail in this court being Criminal Application No.4260 of 2001. It was rejected by me on 22/1/2002 after hearing the learned counsel for the parties. N.D.P.S. Special Case No.23 of 2001 was, however, expedited. Thereafter, applicant Mohd. Kasu again filed Criminal Application No.1995 of 2003. After considering the submissions made by the learned counsel for the applicant and learned counsel for the respondents, I made N.D.P.S. Special Case No.23 of 2001 time bound. I directed the Special Court to dispose it of within a period of eight months from the date of receipt of my order. No order was passed as regards the prayer for bail made by the applicant Mohd. Kasu. It appears that thereafter the special case has not proceeded further at all. Charge sheet is filed by the prosecuting agency on 23/1/2001. Thereafter, seven of the accused filed discharge applications. Two of them were companies. The Special Court discharged seven accused. The prosecuting agency preferred revision in the High Court. The High Court set aside the discharge of one of the accused. The rest of the order of the Special Court was maintained. Against that order, the prosecuting agency approached the Supreme Court. I am informed that the Supreme Court has issued notices to three accused who are discharged. It is an admitted position that the Supreme Court has not stayed the trial. However, the trial has not proceeded so far. The Special

Court has sought extension of time upto March, 2006, to dispose of the special case.

2. The applicants in these criminal applications have made a serious grievance that despite this court's order making the trial time bound, the Special Court has not even begun the case. Though the Supreme Court has issued notices to some of the accused, who have been discharged by the Special Court, the Supreme Court has not stayed the trial of the special case. The learned counsel for the applicants urged that the applicants are in jail for more than four years. The learned counsel submitted that speedy trial is a right of every accused. The learned counsel submitted that apart from the fact that the applicants have a very good case on merit, which according to him, has not been properly argued before this court earlier, the fact that the Special Court has not concluded the case within the time frame laid down by this court would itself entitle the accused to an order of bail. He submitted that this court should take a stringent view of the Special Court's and prosecuting agency's total apathy and inaction.

3. After perusing the first report submitted by the Special Court asking for extension of time, I was of the view that the Special Court has not assigned any acceptable reasons as to why the time should be extended. I, therefore, asked for a fresh report. Accordingly, the Special Court has submitted its report dated 29/4/2005.

The Special Judge has stated that the case was assigned to him in November, 2003 and it appeared on his board on 19/11/2003. From 19/11/2003 till 25/2/2005, the matter came up for hearing on 38 occasions when on majority of the dates, accused were not produced. On 30/4/2004, the prosecuting agency filed Exh.-6 i.e. an application seeking directions from the Special Court for complying with the order dated 14/1/2003 passed by the Special Court especially in respect of filing separate complaints against accused 6, 7 and 20. It appears that it was pointed out to the Special Court that accused 6, 7 and 20 were not discharged for the offence committed by them in respect of controlled substance. For the said offence, complaint was filed against them along with other offences. On the basis of the judgment of the Supreme Court reported in 2001 Cri.L.J. 1015, it was argued that it would not be permissible in law to file a second complaint against accused 6, 7 and 20. Thereafter, in view of the pendency of the special leave petition in the Supreme Court, by consent of parties, the hearing of the application (Exh.-6) was deferred. The Special Court has stated that therefore though no stay order was passed by the Supreme Court, the Special Court has refrained from passing order on Exh.-6 apprehending that its order may be contrary to the order passed by the Supreme Court on the pending special leave petition. It is stated by the Special Judge that all the advocates agreed to deferring of the hearing of Exh.-6 application. It is further stated that accused 4 repeatedly causes obstruction in

the proceedings virtually on each and every date. The learned judge has also noted that the prosecution was directed to find out possibility of early hearing of the special leave petition before the Supreme Court.

4. From this report, it appears that it is the pending special leave petition which has prevented the Special Court from proceeding with the special case. If that is so, then the prosecuting agency should have contacted its counsel in the Supreme Court and sought an early hearing of the special leave petition. I had requested the learned A.P.P. to call the prosecutor Mr. Azhar Khan, who is handling this case in the Special Court. I had also called the Investigating Officer to this court. They were present at the hearing of these bail applications. I had conveyed to them my anxiety about the way in which the case is being handled. I am sure that if the above facts are brought to the notice of the Supreme Court, the Supreme Court would have immediately taken up the special leave petition for hearing. It appears to me that no efforts have been made to expedite the hearing of the special leave petition in the Supreme Court. It is time Smt. Alka Tyagi, the Director of N.C.B., Mumbai, takes note of this and personally looks into the matter.

5. So far as the merits of the case are concerned, Mr. Joshi, the learned counsel for the applicants argued that accused 13 Mohd. Kasu is a manufacturer of dyes and

punches. He had nothing to do with the manufacturing of Mandrax Tablets. He was not aware that the other accused were manufacturing Mandrax Tablets and his dyes and punches were used for that purpose by the other accused. The learned counsel urged that the entire prosecution case rests on the statements of this accused and the co-accused. Applicant Mohd. Kasu has retracted his statements and, therefore, such retracted statements hardly have any evidentiary value. Drawing my attention to section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"), Mr. Joshi urged that under section 37(1)(b), no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Mr. Joshi pointed out that section 19 pertains to punishment for embezzlement of opium by cultivator. Section 19 is obviously not applicable to the applicants. Mr. Joshi submitted that section 24 deals with punishment for external dealings in narcotic drugs and psychotropic substances in contravention of section 12. The learned counsel submitted that this section is also not applicable to the

applicants. Mr. Joshi further pointed out that section 27A pertains to punishment for financing illicit traffic and harbouring offenders. The learned counsel urged that this section is not applicable to the applicants. At any rate, it is not applicable to applicant Mohd. Kasu. Therefore, this case falls outside the ambit of section 37(1)(b).

6. So far as accused 14 Futarmal Jain is concerned, Mr. Joshi urged that even the case of this accused depends on his confessional statement and the confessional statements of the co-accused. He submitted that even this accused has retracted his statement and, therefore, bail cannot be denied to him on the basis of the retracted confessional statement and the confessional statements of the co-accused. The learned counsel urged that these two accused are languishing in the jail for four and half years and, therefore, in the aforementioned circumstances, they may be released on bail on stringent conditions.

7. As against this, Mr. Salvi and Mr. Nalavade, the learned A.P.Ps. contended that the bail application of Mohd. Kasu has once been rejected by this court. There is no change in the circumstances and, therefore, the present bail application of Mohd. Kasu should be rejected. The learned A.P.Ps. drew my attention to the affidavits in reply filed by the N.C.B. and contended that the accused are involved in a conspiracy to

manufacture large quantities of Mandrax Tablets. Their involvement is clearly made out from the statements recorded by the N.C.B. and other attendant circumstances

and, therefore, their bail applications be rejected.

8. It appears that on 28/1/2000, on the basis of the information, officers of NCB intercepted a car and arrested three persons viz. Suresh Jain, K. Anthony and Rajeev Shiroor and from the said vehicle, the officers recovered 20 kgs. of Mandrax Tablets. On 7/12/2000, on the basis of the information, arrest of other co-accused was effected. On 22/12/2000, the officers of NCB, Mumbai Zonal Unit went to search the premises situated at M/s. Universal Engineering Corporation at Gala No.5, Dalwai Industrial Estate, Jawahar Pathak, Goregaon, which was owned by applicant Mohd. Kasu. It was found that the applicant Mohd. Kasu was manufacturing punches in the said unit. He was arrested. Number of punches and master punches of various sizes were recovered from him. During investigation, it was also revealed that accused 5 Ramesh Jain is responsible for manufacturing the Mandrax Tablets and he was in possession of the formula for preparing Mandrax Tablets in Rajasthan. The said Ramesh Jain came to be apprehended and his statement was recorded under section 67 of the NDPS Act. In his statement, Ramesh Jain stated that he has invested his money for manufacturing Mandrax Tablets. On the basis of the statements of Ramesh Jain and others, applicant Futarmal Jain came to be arrested. In his statement,

applicant Futarmal Jain disclosed his involvement in financing and procurement of the machinery for manufacturing of Mandrax Tablets and manufacture of Methaquolone powder as well as Tablets in Rajasthan and Maharashtra.

9. Affidavits in reply have been filed on behalf of N.C.B. It is stated in the affidavit that accused 12 Dilip Nemade in his statement stated that for the manufacture of Mandrax Tablets, tableting machines, dyes and punches with the markings 'M' and '+' were supplied by Mohd. Kasu, who was having workshop by name Universal Engineering Corporation, near Jawahar Nagar Railway Crossing, Goregaon (East). On search being conducted by officers of the NCB, Mumbai, in the premises on 22/12/2000, 124 punches and 8 master punches were recovered. Applicant Mohd. Kasu admitted that they belong to him. He further stated that the master punches were used for the manufacture of various punches which were in turn used in tableting machines for the manufacture of Mandrax Tablets. He further stated that 124 punches recovered were manufactured by him on the orders of accused 5 Ramesh Jain. Applicant Mohd. Kasu has further admitted that accused 5 Ramesh Jain informed him that dyes and punches were used for the manufacture of Mandrax Tablets and that Mandrax Tablets are banned in India and would be exported to South Africa. He has further stated that inspite of being aware that the dyes and punches were being used to manufacture Mandrax

Tablets, he manufactured further 18 sets and delivered the same to accused 14 Futarmal Jain. Accused 5 Ramesh Jain has stated that he paid Rs.1,40,000/- to accused 13 Mohd. Kasu. It is further stated that accused 13 Mohd. Kasu has knowingly abated the crime by supplying dyes and punches and thus have actively participated in the criminal conspiracy and he is part of conspiracy under which very large quantities of Mandrax Tablets were manufactured.

10. So far as accused 14 Futarmal Jain is concerned, in paragraph 6 of the affidavit in reply, it is stated that:

> "6. In the statement of the petitioner recorded on 3.1.2001, under the provisions of section 67 of the NDPS Act, the petitioner has stated that he knows Ramesh Jain (Accused No.5) as both of them are from same village; that he was introduced to one Shane Alam by the said Ramesh Jain; that the said Shane Alam had told the said Ramesh Jain that Shane Alam knew how to manufacture Mandrax and for the said purpose he asked Ramesh to give him Rs.10 lacs which was given by Ramesh Jain in his presence. Thereafter, the said Shane Alam further collected an amount of Rs.4 lacs from Ramesh Jain for the same purpose. But later on he had learnt that the said Shane

Alam was arrested in a Mandrax case and, therefore, Ramesh Jain had suffered a loss of Rs.14 lacs due to the said arrest. In order to sustain the said loss, the said Ramesh Jain sold his garments shop at Hira Panna. Thereafter, he and Ramesh Jain decided to set up their own Mandrax manufacturing factory. That for the said purpose, they contacted one Ayurvedic doctor Lalit K. Dave of Rajasthan and asked the said doctor to introduce to them a person who could help them in the manufacture of Mandrax tablets. Thereafter, the said doctor took them to the gate of a factory and introduced them to a person who disclosed his name as Dilip Nemade (Accused No.12). That the said Dilip was informed by them that they required his help in the manufacture of Mandrax Tablets and Methaqualone Powder. The said Dilip informed them that he did not know how to manufacture Methaqualone Powder but he knew a person who could manufacture Methaqualone powder and disclosed the name of the said person as Chandrakant Bharambe (Accused No.10) a resident of Dombivli and stated that the said person had his factory at Taloja. ....That he along with Ramesh Jain asked

the said Chandrakant Bharambe to manufacture Methaqualone powder and handed over to him the formula for the said process and for the said help/work, both Chandrakant and Dilip were promised Rs.1,00,000/- each and a further amount of 50 paise per mandrax tablet manufactured. That he and Ramesh Jain asked the said Chandrakant to procure the machines required for the purpose of manufacturing Methaqualone powder and Mandrax tablets. The punch and dyes required for putting the marking 'M' and '+' on the manufactured Mandrax Tablets were procured/got made from one Mohd. Salim (Accused No.13) of Universal Engineering Corporation at Goregaon. Ramesh Jain paid Rs.3-3.5 lacs to him to be paid to Chandrakant Bharambe for the procurement of machineries for manufacture of Methaqualone powder and further Rs.1,25,000/- were paid by Ramesh Jain to be paid to Salimbhai for procurement of tabletting machines.....That he took 36 dyes and punches himself to Jalore Mandrax factory at Rajasthan. He stated that the machineries for manufacture of Methaqualone powder was loaded in a truck from a factory named Samson India and transported to Jalore, Rajasthan."

11. These facts indicate that both the accused are party to the conspiracy to manufacture huge quantities of Mandrax Tablets and export them. It appears that they are concerned with commercial quantity of Mandrax Tablets and, as such, prima facie their case may also be covered by section 37 of the NDPS Act. Moreover, if the accused allow their premises to be used for commission of the offence, prima facie, section 25 of the NDPS Act would also be attracted. Section 25 is not covered by section 37(1)(b). In the facts and circumstances of the case, prima facie, it is not possible to accept the submissions of Mr. Joshi, the learned counsel for the applicants that the accused are innocent. It is true that the prosecution is relying on confessional statements, some of which have been retracted. But there are other circumstances such as seizure of huge quantity of Mandrax Tablets and the existence of a chain which runs through the activities of the accused indicating conspiracy. Prima facie, the applicants have indulged in criminal conspiracy in relation to the manufacturing of Mandrax Tablets punishable under section 29 read with section 21(c) of the NDPS Act. They, therefore, cannot be released on bail.

12. It is true that the accused are in jail for four and half years but on that ground alone, the accused cannot be released on bail when they are facing charges under the NDPS Act. The proper course for the prosecuting

agency is to move the Supreme Court to get the special leave petition disposed of and start with the trial in the light of the Supreme Court's order. Mrs. Alka Tyagi, Director of N.C.B. may take steps in that behalf. The prosecuting agency should also explore the possibility of proceeding with the case as there is no stay order passed by the Supreme Court. The prosecuting agency must apply its mind to the provisions of Criminal Procedure Code to find out whether the trial of certain accused can be separated. If the accused are not co-operating or creating obstacles, the court will have to deal with them with a firm hand. If the special leave petition is not disposed of in the near future, if found feasible, possible and not detrimental to the case, the Special Court may consider the possibility of separating the trial and bringing it to an expeditious end. On the request made by the Special Court to extend the time to dispose of the trial, the time is extended upto March, 2006. The Special Court should make all efforts to dispose of the case within the extended time.

13. A copy of this order be sent to Smt. Alka Tyagi, Director of the Narcotic Central Bureau.

(SMT. RANJANA DESAI, J.)